

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KENNY HENDRIX,

Petitioner,

vs.

SHERIFF OF CLARK COUNTY,

Respondent.

2:12-cv-00470-JCM-VCF

ORDER

Petitioner has filed a handwritten habeas petition without either paying the filing fee or filing an application to proceed *in forma pauperis*.

Petitioner has failed to properly commence the action, and the papers presented are subject to multiple substantial defects.

To properly commence a habeas action, petitioner either must pay the \$5.00 filing fee or must submit a properly completed application to proceed *in forma pauperis*. Petitioner did neither.

Moreover, under the local rule LSR 3-1, a habeas petition must be filed on the court's required form, in this case a habeas petition form for a petition under 28 U.S.C. § 2241. Petitioner may not submit a handwritten petition to the court.

This action therefore will be dismissed without prejudice to the filing of a new petition on the proper form with a pauper application in a new action. It does not appear from file review that a dismissal without prejudice will materially affect a later analysis of either timeliness or other potential procedural defenses, given that petitioner is seeking pretrial

1 habeas relief.¹ The present improperly-commenced action therefore will be dismissed without
2 prejudice. Proceedings under this docket number will be closed by the order and judgment
3 of dismissal, and petitioner must start a new action under a new docket number if he seeks
4 further relief.

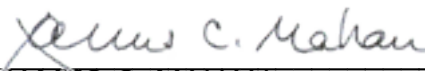
5 IT THEREFORE IS ORDERED that the petition shall be DISMISSED without prejudice.

6 IT FURTHER IS ORDERED that a certificate of appealability is DENIED, as jurists of
7 reason would not find the dismissal of this improperly commenced action without prejudice
8 to be debatable or wrong.

9 The clerk shall provide petitioner a copy of an AO-242 form for a § 2241 petition and
10 a copy of the papers that he filed.

11 The clerk shall enter final judgment accordingly, dismissing this action without
12 prejudice.

13 DATED: April 2, 2012.

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16 _____
17 JAMES C. MAHAN
18 United States District Judge
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25 ¹Petitioner has filed a pretrial habeas petition seeking federal intervention in a pending state criminal
26 proceeding. The federal limitation period thus has not even begun to run. Petitioner should note that federal
27 courts generally do not intervene in pending state criminal proceedings. A federal court thus generally will not
28 consider a federal habeas petition in advance of completion of, at the very least, proceedings on direct appeal
following any judgment of conviction. Merely because a habeas petitioner maintains that constitutional errors
allegedly have occurred in the state criminal proceedings and that the state courts have not granted pretrial
relief does not provide a basis for federal pretrial intervention.